



July 26, 2024

Rule Coordinator
Office of the Insurance Commissioner
302 Sid Snyder Ave SW
Olympia, WA 98501
rulescoordinator@oic.wa.gov

Re: WSR 24-11-126 - Comment on Prepublication Draft Relating to Health Care Benefit Managers (HCBM)

To whom it may concern:

The Washington State Pharmacy Association (WSPA) is appreciative of the care and effort the OIC staff put into creating the prepublication draft. It is evident that our feedback, particularly on the appeals process is been incorporated. Below we offer additional suggestions to strengthen and clarify the rule to protect patients and pharmacies. Thank you for the opportunity to provide these comments. The WSPA collaborated with a subcommittee of members to formulate our feedback.

Subchapter E Comments:

WAC 284-180-505

(1) Thank you for the strengthened wording, we believe this will clarify the appeals process with the PBMs. We suggest changing wording from “during the term of the current or immediate past contract” be changed to “during the last two years.” PBMs can audit for 24 months under RCW 48.200.220. We believe that pharmacies should have this same time window to review and appeal claims.

(2) The WSPA strongly encourages OIC to ensure the availability and accuracy of the list of included BIN, PCN, and group identifiers covered by this regulation. We recommend fines for non-compliance, as this list is crucial for enforcement. PBMs have previously evaded accountability by faulsly claiming ERISA exemption. This language should state that the PBMs must maintain and provide an accurate list within 1 business day of a request. Additionally, if a PBM provides a look up for covered lives, it should indicate whether the individual is covered by this chapter’s provisions.

(3) The OIC has an opportunity to improve enforcement of this subpart. Many PBMs do not provide complete contact information outlined in (3)(a), often listing only an email. Further, this email is not the contact for appeals to the OIC, and no contact in legal affairs is made available for notice of an OIC appeal.

(3)(ii) We suggest that a detailed and reasonable description of actions must be provided. Currently, some PBMs require use of glitchy, unreliable systems to file appeals that are very difficult to navigate. As an example, the CVS portal often rejects accurate NPI numbers and blocks the filing of claims. Despite being notified of the error, the system has not been resolved. We recommend OIC staff observe the difficulties pharmacies face when filing complaints.

(4) We appreciate the inclusion of an image from the system is sufficient documentation. This should also suffice to prove a pharmacy could not purchase the medication for less. Also, please consider adding “or their representative” after a network pharmacy for document submission.

(7) Proving the non-existence of lower cost medications is challenging. Pharmacies struggle to “prove” they cannot find the medication at a lower price. A screen shot from their primary wholesaler, and secondary is applicable, should suffice. Requiring more would entail sharing confidential and proprietary pricing data with PBMs.

(9) Reasonable adjustments should be made to all pharmacies under the contract for 9 months. This appears to be the intent, especially regarding critical access pharmacies. This also seems to make further sense regarding language on page 33 (8)(b) allowing denials to be based on other claims being the subject of an appeal. Additionally, please clarify that the reasonable adjustments must include, “payment of the claim or claims at issue and subsequent fills since the appeal was filed at the net amount paid by the pharmacy to the supplier of the drug and a dispensing fee.” RCW 48.200.280 Section 5 lists that dispensing fees should not be calculated into adequate reimbursement for a medication. Currently, when PBMs adjust a price they pay only the cost of the medication, and do not include additional for dispensing fees. This does not cover the true cost to dispense a medication. Pharmacies use the dispensing fees to cover costs such as a lease for the building, salaries, computers, prescription labels and vials, insurance, taxes, etc. Further, pharmacies should not have to appeal each month’s fill for a medication; once an appeal is approved, subsequent underpaid claims should be paid the corrected amount. Both of these changes will reduce the number of appeals and the administrative burden.

(10) Please clarify that appeals can be filed within 24 months from the adjudication of a claim. Consider the wording “the following may file an appeal within 24 months from the adjudicated claim with a pharmacy benefit manager.” The pharmacy benefit managers have 24 months to audit a pharmacy claim under RCW 48.200.220, the pharmacies should have the same window to review and appeal claims. Currently, some PBMs have been limiting the pharmacy appeals to 30 days after the claim was adjudicated, which is not stipulated by law and is too restrictive, especially given the glitches in PBM appeal systems.

(12) Pharmacies have not been able to find this information for many PBMs. Please ensure that PBMs are making this available with items from (3)(a) to facilitate OIC appeals.

Current enforcement needs:

In addition to the suggestions above please, please enforce the existing laws:

RCW 48.200.280 (2)(a)-(f): PBMs are not maintaining or posting updated lists, hindering pharmacies' ability to select correct medications and understand reimbursements. The "MAC lookup" lists are outdated and inaccurate.

RCW 48.200.280 (g): This states that dispensing fees should not be included in predetermined costs, but when the pharmacy appeals underpayments, an additional dispensing fee is not included in the price correction as required by this section of the law.

RCW 48.200.280 (i): PBMs are still charging unlawful fees to pharmacies for network participation, credentialing and claims processing. This issue is exacerbated when carriers required processing by discount cards that impose fees on pharmacies. We believe that it is essential to clarify that these fees, caused by processing the medication claim as directed by the carrier are unlawful.

Thank you for the opportunity to comment on the rules for enforcement of the HCBM Chapter. We are available for further discussion and look forward to participating in stakeholder meetings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jenny Arnold', with a stylized, cursive script.

Jenny Arnold, PharmD, BCPS
Chief Executive Officer